

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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JOHN UMBARGER,

Petitioner,

Case No. 1:08-cv-379

v.

Honorable Robert J. Jonker

SHERRY BURT,

Respondent.

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**ORDER**

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. On June 5, 2008, Petitioner filed a letter (docket #3), which stated that someone fraudulently submitted his habeas petition for filing in the Western District rather than the Eastern District. Petitioner wishes to file his habeas petition in the Eastern District. Petitioner requests the Court to “un-file” his petition. (June 5, 2008 Letter, docket #3.) Accordingly, this Court construes Petitioner’s letter as a motion for voluntary withdrawal of his application for habeas corpus relief.

Petitioner was convicted after a jury trial of two counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct in Kent County Circuit Court Case No. 95-3419-FC; and one count of first-degree criminal sexual conduct in Kent County Circuit Court Case No. 95-3388-FC. (*See* Exs. C & D to Pet.; docket #1.) Prior to his trial, Petitioner agreed to consolidate the two state court cases. (*See* Ex. A to Pet.) The cases were also consolidated on appeal in the Michigan appellate courts. *See People v. Umbarger*, 1999 WL 33437813, at \*1 (Mich. Ct. App. Aug. 13, 1999). Petitioner filed two applications for habeas corpus relief in the Western District of Michigan with identical grounds for habeas corpus relief in the instant case and *Umbarger v. Burt*, No. 1:08-cv-380 (W.D. Mich.). On May 14, 2008, this Court dismissed

*Umbarger*, No. 1:08-cv-380, as duplicative of the current case. *See Umbarger*, No. 1:08-cv-380, docket #2. In the order of dismissal, the Court noted that it would consider both criminal convictions in Petitioner's application for habeas corpus relief in the instant case. *See id.* The Court therefore ordered Petitioner to file an amended petition on the form and include all of his grounds for habeas corpus relief from both habeas petitions (docket #2). Petitioner has not yet submitted his amended petition.

Petitioner claims that he did not wish to file his petition in the Western District of Michigan. Venue in habeas corpus actions is governed by 28 U.S.C. § 2241. That statute allows a petition to be filed either in the district where petitioner is in custody or in the district in which petitioner was convicted. 28 U.S.C. § 2241(d). Petitioner is presently incarcerated at Parnall Correctional Facility, located in Jackson County of the Eastern District of Michigan. As set forth above, Petitioner was convicted in Kent County of the Western District of Michigan. As venue is proper in either the Eastern District or Western District, this Court shall grant Petitioner's request. *See* 28 U.S.C. § 102(a). Accordingly,

IT IS ORDERED that Petitioner's construed motion for voluntary withdrawal of his habeas petition (docket #3) is GRANTED.

IT IS FURTHER ORDERED that the captioned case be and hereby is DISMISSED without prejudice.

Dated: June 17, 2008

/s/ Hugh W. Brenneman, Jr.  
HUGH W. BRENNEMAN, JR.  
United States Magistrate Judge